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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/820,814	04/09/2004	Hiroyuki Ishii	251763US90	8873
22850	7590	03/02/2009		
OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, P.C. 1940 DUKE STREET ALEXANDRIA, VA 22314			EXAMINER LY, ANH VU H	
			ART UNIT	PAPER NUMBER
			2416	
			NOTIFICATION DATE	DELIVERY MODE
			03/02/2009	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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<i>Office Action Summary</i>	Application No.	Applicant(s)	
	10/820,814	ISHII ET AL.	
	Examiner	Art Unit	
	ANH-VU H. LY	2416	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 January 2009.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,6,8 and 9 is/are rejected.
- 7) ☒ Claim(s) 3-5 and 7 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 101

35 U.S.C. 101 reads as follows:

Whoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may obtain a patent therefor, subject to the conditions and requirements of this title.

1. Claim 9 is rejected under 35 U.S.C. 101 as not falling within one of the four statutory categories of invention. While the claims recite a series of steps or acts to be performed, a statutory "process" under 35 U.S.C. 101 must (1) be tied to another statutory category (such as a particular apparatus), or (2) transform underlying subject matter (such as an article or material) to a different state or thing (Reference the May 15, 2008 memorandum issued by Deputy Commissioner for Patent Examining Policy, John J. Love, titled "Clarification of 'Processes' under 35 U.S.C. 101"). The instant claims neither transform underlying subject matter nor positively tie to another statutory category that accomplishes the claimed method steps, and therefore do not qualify as a statutory process. Herein, the determining and controlling steps are not tied a machine or a computer. Therefore, it is non-statutory subject matter.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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2. Claims 1-2 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lee et al (US 2003/0112773 A1) in view of Chen et al (US 2003/0134655 A1). Hereinafter, referred to as Lee and Chen.

With respect to claims 1 and 9, Lee discloses a radio communications control system for controlling transmission power of a shared control channel for transmitting control signals to a plurality of mobile stations (Fig. 6), the system comprising:

a transmission power controller configured to control the transmission power of the shared control channel based on a transmission power of a dedicated channel accompanying the shared control channel (page 1, 21st paragraph, determining transmission power of a downlink dedicated physical channel, DL DPCH, based on the received TPC command and determining transmission power of a shared control channel for HS-DSCH (HS-SCCH) transmitted to each mobile station by using a power offset value related to transmission power of the DL DPCH).

Lee does not disclose a determination unit configured to determine a communication quality of the shared control channel and control the transmission power of the shared control channel based on communication quality of the shared control channel received from the determination unit.

Chen discloses measuring the quality of forward link shared channels, transmitting feedback information to the base stations, and adjusting the transmission power of the forward link shared channels accordingly (page 7, 65th paragraph and TABLE 1). Herein, forward link channels include all forward shared control channels, e.g., F-CCCH, F-DCCH, etc...). Therefore, it would have been obvious to one having ordinary skilled in the art at the time the invention was

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made to adjust transmission power of shared control channel according to feedback information in Lee's system, as suggested by Chen, to prevent interference.

With respect to claim 2, Lee discloses that wherein the transmission power controller is configured to set the transmission power of the shared control channel by changing the transmission power of the dedicated channel based on a power offset (page 1, 21st paragraph, determining transmission power of a shared control channel for HS-DSCH transmitted to each mobile station by using a power offset value related to transmission power of DL DPCH) and the transmission power controller is configured to control the power offset in accordance with the communication quality of the shared control channel (page 3, 55th paragraph, in order to prevent an increase in an error rate of HS-SCCH that can possibly occur in the soft handoff of DL DPCH, the transmission power of HS-SCCH should be increased).

3. Claims 6 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lee and Chen further in view of the admitted prior art (APA) as disclosed in the specification in pages 1-5 and Figs. 1-3. Hereinafter, referred to as Lee, Chen, and APA.

With respect to claims 6 and 8, Lee discloses a radio communications control system for controlling transmission power of a shared control channel for transmitting control signals to a plurality of mobile stations (Fig. 6). Lee does not disclose a maximum transmission power controller configured to control a maximum transmission power of the shared control channel during a predetermined period and wherein the transmission power controller is configured to control the transmission power of the shared control channel so as not to exceed the maximum transmission power nor control the maximum transmission power so as not to exceed an upper

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limit value per each of the shared control channels. APA discloses a system having maximum total transmission power of HS-SCCH set (Fig. 1, right side) and having transmission power of each of the shared control channel not to exceed the maximum transmission power set (Fig. 1. Herein, the transmission power of HS-SCCH is set not to exceed the maximum total transmission power of HS-SCCH). It would have been obvious to one having ordinary skilled in the art at the time the invention was made to control the transmission power of HS-SCCH not to exceed the set maximum transmission power of HS-SCCH in Lee's system, as suggested by APA, to prevent interference among cells.

Allowable Subject Matter

4. Claims 3-5 and 7 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

5. Applicant's arguments with respect to claims 1-9 have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to ANH-VU H. LY whose telephone number is (571)272-3175. The examiner can normally be reached on Monday-Friday 7:00am - 4:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, William Trost can be reached on 571-272-7872. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Anh-Vu H Ly/

Primary Examiner, Art Unit 2416